

1 HOUSE BILL NO. 274

2 INTRODUCED BY D. HOWARD, C. SMITH, SKATTUM, READ, REGIER, BLASDEL, BLYTON, HALE,
3 LONEY, O'HARA, VANCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL
6 UNDER STATE LAW; ~~REQUIRING CERTAIN~~ ENCOURAGING EMPLOYERS TO USE THE FEDERAL
7 E-VERIFY SYSTEM; PROVIDING ENFORCEMENT PROCEDURES AND PENALTIES AND FOR SUSPENSION
8 OF BUSINESS LICENSES OF EMPLOYERS WHO EMPLOY UNAUTHORIZED ALIENS; AND PROVIDING AN
9 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 8 7], the following definitions
14 apply:

15 (1) "Agency" means any state, county, city, or other local government agency, department, board, or
16 commission that issues a license for purposes of operating a business in this state.

17 (2) "Department" means the department of ~~labor and industry~~ JUSTICE provided for in ~~2-15-1701~~
18 2-15-2001.

19 (3) "Employee" means any person who performs employment services within the state for an employer
20 pursuant to an employment relationship between the employee and employer.

21 (4) (a) "Employer" means any individual or organization that transacts business in this state, that holds
22 or has applied for a license issued by an agency in this state, and that employs individuals who perform
23 employment services in this state.

24 (b) The term does not include an entity that hires an independent contractor to perform work or the
25 occupant or owner of a private residence who hires casual, domestic labor to perform work customarily performed
26 by a homeowner entirely within a private residence.

27 (5) "Employment authorization program" means the federal electronic verification of work authorization
28 program, known as the e-verify program, 8 U.S.C. 1324a.

29 (6) "Knowingly employ an unauthorized alien" means to employ an unauthorized alien in violation of 8
30 U.S.C. 1324a. This term must be interpreted consistently with that section and any federal rules and regulations

1 adopted pursuant to that section.

2 (7) "License" means any agency license, permit, certificate, approval, registration, charter, or similar form
3 of authorization that is required by law and that is issued by any agency for the purposes of operating a business
4 in this state, except a license exempted under the provisions of [section 7 6], and includes articles of
5 incorporation, certificates of partnership, and partnership registrations required to be filed with the secretary of
6 state under Title 35.

7 (8) "Unauthorized alien" has the meaning provided in 8 U.S.C. 1324a(h)(3).

8

9 **NEW SECTION. Section 2. Verification of employment eligibility -- e-verify program.** (1) An
10 employer ~~EMPLOYING EIGHT 25 OR MORE EMPLOYEES shall~~ IS ENCOURAGED, after making an offer of employment
11 that has been accepted by an employee, TO verify the employment eligibility of each prospective employee using
12 the employment authorization program. ~~The verification must~~ IF THE VERIFICATION IS MADE, IT SHOULD be made
13 within the time period stipulated by federal law after the person is hired. A continuing employee hired prior to the
14 date the employer registers with the program is exempt from the requirements of this section.

15 (2) For purposes of [sections 1 through 8 7], there is a rebuttable presumption that an employer who
16 used the employment authorization program in compliance with this section did not knowingly employ an
17 unauthorized alien in violation of [section 3].

18

19 **NEW SECTION. Section 3. Employment of unauthorized aliens -- prohibition -- false and frivolous**
20 **complaints.** (1) An employer may not knowingly employ an unauthorized alien.

21 (2) (a) A person may file a complaint with the department if the person has actual or constructive
22 knowledge that:

23 (i) an employer employs or has within 90 days employed an unauthorized alien; or

24 (ii) an unauthorized alien is employed by an employer.

25 (b) A person who knowingly files a false or frivolous complaint under this subsection (2) is, upon
26 conviction, guilty of a misdemeanor.

27 (3) Upon receipt of a complaint filed under subsection (2)(a), the department shall notify the employer
28 and shall direct the employer to notify any employee referred to in the complaint. The department shall investigate
29 whether a violation has occurred ~~and, if the allegations are substantiated, shall hold an administrative hearing~~
30 ~~at which the employer may present information. An employer has the right to be represented by counsel at the~~

1 ~~hearing~~. The department shall request verification under the employment authorization program of the
 2 employment authorization status of an employee referred to in the complaint. The department may not attempt
 3 to independently make a final determination of whether an alien is authorized to be employed in the United States.
 4 The department shall rely upon verification of employment authorization provided by the federal government.

5 ~~(4) The attorney general, a county attorney, a county sheriff, or a peace officer of any other local law~~
 6 ~~enforcement agency may issue subpoenas for the employer's records that relate to the employment of an~~
 7 ~~unauthorized alien.~~

8 ~~(5)~~(4) If after ~~a hearing~~ AN INVESTIGATION it is found that THERE IS EVIDENCE PROVIDED UNDER THE
 9 EMPLOYMENT AUTHORIZATION PROGRAM THAT the employer has employed an unauthorized alien and the
 10 department determines that the complaint is not frivolous, the department shall notify:

11 (a) the United States immigration and customs enforcement agency of the identity of the unauthorized
 12 alien and the alien's address or location in the state, if known; and

13 (b) the local law enforcement agency of the presence of the unauthorized alien in the jurisdiction.
 14

15 NEW SECTION. Section 4. Violations -- penalties -- orders -- affidavit -- license suspension --
 16 judicial enforcement. (1) Upon ~~a finding after hearing~~ EVIDENCE PROVIDED FROM THE EMPLOYMENT AUTHORIZATION
 17 PROGRAM that an employer has violated [section 3(1)], the department shall ISSUE A CEASE AND DESIST order
 18 REQUIRING the employer:

19 (a) to terminate the employment of all unauthorized aliens; and

20 (b) except as provided in subsection (3), within 10 business days after the order is issued to file a signed
 21 sworn affidavit with the department attesting that the employer has corrected the violation by:

22 (i) terminating the unauthorized alien's employment;

23 (ii) after consultation with the employee, requesting a secondary or additional verification of employment
 24 authorization using the employment authorization program; or

25 (iii) attempting to terminate the unauthorized alien's employment but the termination was challenged in
 26 a court of competent jurisdiction.

27 (2) If the employer fails to file the affidavit as required in this section AND FAILS TO REQUEST A HEARING AS
 28 PROVIDED IN SUBSECTION (5), the department shall order the appropriate agencies to suspend all licenses subject
 29 to suspension under subsection (4) that are held by the employer. Except as provided in subsection ~~(5)~~ (6):

30 (a) all licenses that are suspended under this subsection (2) remain suspended until the required affidavit

1 has been filed with the department; and

2 (b) upon the filing of the affidavit, the suspended licenses must be automatically reinstated.

3 (3) The 10-day period for filing an affidavit must be tolled:

4 (a) during the pendency of an action under subsection (1)(b)(iii); and

5 (b) during any contest period in which the federal government may allow an alien to challenge the federal
6 government's determination of the alien's immigration status or employment authorization.

7 (4) Licenses that are subject to suspension under this section are all licenses that are held by the
8 employer and that are necessary to operate the employer's business at the employer's business location where
9 the unauthorized alien performed work. If a license is not necessary to operate the employer's business at the
10 specific location where the unauthorized alien performed work but a license is necessary to operate the
11 employer's business in general, the licenses that are subject to suspension under this section include all licenses
12 that are held by the employer at the employer's principal place of business.

13 (5) AFTER RECEIVING A CEASE AND DESIST ORDER FROM THE DEPARTMENT PURSUANT TO SUBSECTION (1), AN
14 EMPLOYER MAY, WITHIN 10 DAYS AFTER RECEIVING THE ORDER, REQUEST THAT THE DEPARTMENT CONDUCT A HEARING
15 TO CONFIRM THE FACTS DETERMINED BY THE DEPARTMENT AFTER ITS INVESTIGATION PURSUANT TO [SECTION 3]. IF AN
16 EMPLOYER REQUESTS A HEARING, ANY ORDER PREVIOUSLY ISSUED BY THE DEPARTMENT IS STAYED PENDING THE RESULTS
17 OF THE HEARING. THE CONTESTED CASE PROCEDURES PROVIDED IN TITLE 2, CHAPTER 4, PART 6, APPLY TO A HEARING
18 HELD BY THE DEPARTMENT.

19 ~~(5)(6)~~ Upon a ~~finding after hearing~~ DETERMINING THAT THERE IS EVIDENCE of a second or subsequent
20 violation of [section 3(1)] within a 2-year period, the department shall, AFTER PROVIDING AN OPPORTUNITY FOR A
21 HEARING AS PROVIDED IN SUBSECTION (5), order the appropriate agencies to suspend, for at least 30 days or for a
22 longer period as directed by the department, all licenses that are held by the employer and that are necessary
23 to operate the employer's business at the employer's business location where the unauthorized alien performed
24 work. If a license is not necessary to operate the employer's business at the specific location where the
25 unauthorized alien performed work but a license is necessary to operate the employer's business in general, the
26 department shall order the appropriate agencies to suspend all licenses that are held by the employer at the
27 employer's primary place of business. On receipt of an order, an agency shall immediately suspend a license for
28 at least 30 days or for a longer period as directed by the department.

29 ~~(6)(7)~~ If an agency or employer refuses to comply with an order issued by the department under this
30 section, the department may file an action in the district court with jurisdiction over the agency or employer for

1 an order directing the agency or employer to comply with the department's order AND TO PAY A CIVIL PENALTY OF
 2 NOT MORE THAN \$20 FOR EACH ALIEN UNLAWFULLY EMPLOYED BY THE EMPLOYER. ANY CIVIL PENALTY COLLECTED
 3 PURSUANT TO THIS SUBSECTION MUST BE DEPOSITED IN THE GENERAL FUND.

4 ~~(8) IN ORDER TO IMPLEMENT THIS SECTION, THE SECRETARY OF STATE SHALL DEVELOP AND USE A CARD FILE~~
 5 ~~OR OTHER MANUAL SYSTEM TO TRACK AND ACT UPON LICENSES SUBJECT TO THIS SECTION.~~

6
 7 NEW SECTION. Section 5. District court jurisdiction. The district courts have jurisdiction to decide
 8 challenges against the enforcement of [sections 1 through 8 7] brought by an employer subject to a complaint
 9 under [sections 1 through 8 7] or the employee of the employer who is alleged to be an unauthorized alien and
 10 to enforce an order of the department as provided in [section 4].

11
 12 ~~NEW SECTION. Section 6. Public database.~~ The department shall maintain a public database,
 13 available on its website, containing copies of all orders issued pursuant to [section 4].

14
 15 NEW SECTION. Section 6. License exemption -- length of suspension -- rules. The department
 16 shall, no later than 12 months after [the effective date of this act], adopt rules:

- 17 (1) establishing a procedure to be used by an agency to exempt certain licenses issued by the agency
 18 from the provisions of [sections 1 through 8 7] that have been determined, with the concurrence of the
 19 department, to be unrelated to operating a business in this state;
 20 (2) establishing guidelines for the length of suspensions under [section 4(5) 4(6)]; and
 21 (3) establishing investigation and hearing procedures.

22
 23 NEW SECTION. Section 7. Construction. The provisions of [sections 1 through 8 7] must be construed
 24 without regard to race or national origin and in a manner so as to be fully consistent with applicable federal law.

25
 26 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable
 27 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
 28 remains in effect in all valid applications that are severable from the invalid applications.

29
 30 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 8 7] are intended to be

1 codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through & 7].

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3 NEW SECTION. Section 10. Effective date. [This act] is effective 6 months after the date of passage
4 and approval.

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6 NEW SECTION. Section 11. Applicability. [This act] applies to employment decisions made on or after
7 [the effective date of this act]. The department may not act upon a complaint against an employer for a violation
8 that occurs prior to [the effective date of this act].

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